

KACM710029372023



IN THE COURT OF CIVIL JUDGE AND ADDL. J.M.F.C, TARIKERE

**PRESENT: Sri. Rahul Shettigar, B.Com (Hons.), LL.B
Civil Judge & Addl. J.M.F.C, Tarikere**

DATED THIS THE 4th DAY OF AUGUST, 2025

ORIGINAL SUIT No. 431/2023

BETWEEN:

1. Smt. Yallamma,
S/o. Late. Sri. Raghu,
Age 70 years,

PLAINTIFF

2. Sri. Shankara,
S/o. Late. Sri. Raghu,
Age 35 years,

3. Smt. Suma,
D/o. Late. Sri. Raghu,
Age 35 years,

All are Agriculturists,
R/o. Ravuru village,
Fishermen Camp,
Honnekodige post,
Kasaba Hobli,
N.R. Pura Taluk,
Chikkamagaluru District.

4. Sri. Saganappa,
S/o. Late. Sri. Karidasappa,
Age 69 years,
Agriculturist,
R/o. Gopala Bhusenahalli village,
Lakkavalli Hobli,
Tarikere Taluk.

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4th Plaintiff also as GPA holder of
the Plaintiff No.1 to 3.

(By Sri. N. Venkatarama, Advocate)

-AND-

1. Smt. Kempamma,
W/o. Late. Sri. Thammegowda,
Age 65 years,

DEFENDANTS

2. Sri. Lakkappa,
S/o. Late. Sri. Thammegowda,
Age 42 years,

3. Sri. Hoganuregowda,
S/o. Late. Sri. Thammegowda,
Age 40 years,

Defendant No.1 to 3 are
Agriculturist, R/o. Keremegala Doddi,
T. Channapura Village,
Honnekere Hobli,
Nagamangala Taluk,
Mandya District.

(By Sri. T.R. Srinivas., Advocate)

IN I.A.NO.I

Smt. Yallamma and others

**APPLICANTS/
PLAINTIFFS**

-AND-

Smt. Kempamma and others

**OPPONENTS/
DEFENDANTS**



PARTICULARS

| | | |
|------------|--|---|
| <i>i</i> | <i>Provision under which the application is filed</i> | <i>Order XXXIX Rule 1 and 2 r/w. Section 151 of CPC</i> |
| <i>ii</i> | <i>Relief sought for</i> | <i>Order of T.I</i> |
| <i>iii</i> | <i>The date on which the application is filed</i> | <i>20.11.2023</i> |
| <i>iv</i> | <i>Number of the application</i> | <i>I.A.No.I</i> |
| <i>v</i> | <i>The date on which the objections are filed by opponents/ Defendants</i> | <i>20.12.2024</i> |
| <i>vi</i> | <i>The date on which the orders were passed on the said application</i> | <i>04.08.2025</i> |

ORDERS ON I.A. NO.I

1. Applicants/ Plaintiffs have filed the instant application under Order XXXIX Rules 1 & 2 r/w. Section 151 of C.P.C seeking the relief of temporary injunction by restraining the Opponents/ Defendants, their agents, servants, assigns, representatives or any person claiming under them from unlawfully interfering with the peaceful possession and enjoyment of the suit schedule property by the Plaintiff or from taking forcible possession of the suit schedule property without due process of law, pending disposal of the suit.

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2. In the affidavit appended to the application, it is contended that the suit has been filed seeking relief of permanent injunction. The certain property was sold by the Government in a public auction to one Babanna, S/o Durganna, in the year 1967. A grant certificate was also issued to him, and he was put in possession of the same, subject to a non-alienation condition for a period of 15 years. The revenue records were mutated in the name of Babanna. He regularly paid property taxes and was in sole possession of the property. Said Babanna sold 30 guntas of the property during his lifetime, and the remaining land is the subject matter of the present suit. The said Babanna is the father-in-law of Plaintiff No.1 and grandfather of Plaintiffs No.2 and 3. Upon his death intestate, the Plaintiffs succeeded to his estate. The husband of Plaintiff No.1 also passed away in the year 1996. The *khata* of the suit schedule property was mutated jointly in the names of Plaintiffs No.1 to 3. After the completion of the non-alienation period, Plaintiffs No.1 to 3 entered into an agreement for sale in the year 2022 with Plaintiff No.4, agreeing to sell the suit schedule property for a consideration

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of ₹12,00,000/-. An amount of ₹1,50,000/- was paid as earnest money, and the execution of the sale deed was deferred for a specified period. In the meantime, since Plaintiffs No.1 to 3 were residing away from the suit schedule property, they put Plaintiff No.4 in possession of the same. Plaintiff No.4 is presently in possession of the suit schedule property. He had also filed a suit in O.S. No. 19/2023 against Plaintiffs No.1 to 3 seeking specific performance of the contract, which came to be settled under a compromise decree in the year 2023. The registered sale deed in respect of the suit schedule property is yet to be executed pursuant to the decree. In these circumstances, the Defendants, claiming to be the wife and children of one late Thammegowda, have resisted the change of *khata* before the Assistant Commissioner, Tarikere, claiming that the said Thammegowda had purchased the suit schedule property from late Babanna in the year 1975. It is contended that the sale deed relied upon is concocted and was allegedly executed within the non-alienation period. Though the Defendants have no semblance of right, title, or interest over the suit schedule property, they

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are attempting to interfere with the Plaintiffs' possession. This has necessitated the filing of the present suit. The Plaintiffs contend that they have a prima facie case, that the balance of convenience lies in their favour, and that they would suffer irreparable injury if the temporary injunction is not granted. Hence, they pray that the application be allowed.

- 3.** *Per contra*, the Opponent/Defendant No.3 has filed objections to the instant application, and Defendants No.1 and 2 have adopted the written statement filed by Defendant No.3. It is stated that the application lacks essential facts, and a prayer is made to treat the averments in the written statement of Defendant No.3 as objections to the application. In the written statement, apart from denying the allegations made in the plaint, it is contended that late Babanna sold the suit schedule property in favour of the husband of Defendant No.1 under a registered sale deed executed in 1975 and put the Defendants' family in possession. Since the *khata* was not mutated accordingly, the Defendants approached the Assistant Commissioner, Tarikere, seeking mutation, which was rejected with a direction to obtain an order from the Civil

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Court. In the meanwhile, Plaintiffs No.1 to 3, taking advantage of the fact that the *khata* remained in the name of late Babanna, got their names entered. Plaintiff No.4 is alleged to have obtained a fake agreement for sale, all with an intention to defraud the Defendants. The Defendants claim to be the absolute owners of the suit schedule property and are in possession thereof under the registered sale deed. Hence, the Defendants pray that the application be dismissed.

4. Heard both sides.
5. Having heard the rival contention and on perusal of the materials, the points that would now arise for my consideration are as under-

Point No.1 : Whether the Plaintiffs have made out a prima-facie case as against the Defendants?

Point No.2 : Whether the balance of convenience lies in favour of Plaintiffs?

Point No.3 : Whether denial of temporary injunction would cause irreparable injury or hardship to the Plaintiffs?

Point No.4 : What Order

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6. Now, my finding on the above points are as follows-

Point No.1 : In the Negative

to 3

Point No.4 : As per the final order, for the following -

REASONS

7. **Point No.1 to 3:** The instant suit is filed seeking relief of permanent injunction restraining the Opponents/ Defendants, their agents, servants, assigns, representatives or any person claiming under them from unlawfully interfering with the peaceful possession and enjoyment of the suit schedule property by the Plaintiff or from taking forcible possession of the suit schedule property without due process of law and such other ancillary reliefs. The instant application is filed seeking an order of temporary injunction with the prayer which is same as that of the main relief.
8. Before advertng to the factual matrix any further, it would be beneficial to first understand the overall concept of temporary injunction. The grant of temporary injunction is governed by Specific Relief Act of 1963 as well as the C.P.C. Section 37(1) of the Specific Relief Act of 1963 provides that the grant of

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temporary injunction would be regulated by C.P.C. Order XXXIX Rules 1 & 2 and Section 94 (c) of C.P.C provide circumstances under which an order of temporary injunction can be granted. That apart, it is now settled that Sections 151 of C.P.C also can be invoked sparingly to grant an order of temporary injunction to meet the ends of justice if the circumstances are not covered either under Order XXXIX Rules 1 & 2 or Section 94 (c) of C.P.C (See **MANOHAR LAL CHOPRA VS RAI BAHADUR RAO RAJA SETH HIRALAL** reported in **AIR 1962 SC 527**). Though the above provisions provide the circumstances under which an order of temporary injunction could be granted, the principles governing grant of an order of temporary injunction is evolved by judicial pronouncements. The Hon'ble Supreme of Court of India in **GUJARAT BOTTLING CO. LTD. V. COCA COLA CO.** reported in **(1995) 5 SCC 545** has held at Para No.43 as under –

"The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests – (i) whether the Plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the Plaintiff; and (iii) whether the Plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is



disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the Plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the Plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. [See:Wander Ltd.v.Antox India (P) Ltd.[1990 Supp SCC 727] , (SCC at pp. 731-32.) In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the Plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial"

9. In GOWRISHANKARA SWAMIGALU V. SRI SIDDHAGANGA MUTT reported in **1989 SCC ONLINE KAR 116**, the Hon'ble High Court of Karnataka has held at Para No.18, 25 & 26 as under –

(i) Grant of ad-interim injunction has to course through the following slots : (i) prima facie case; (ii) balance of convenience; (iii) irreparable injury to the Plaintiff, and (iv) lastly, all injunctions being absolutely discretionary



in nature whether there was any overriding consideration that supported the refusal of the injunction by the Court-below.

*(ii) The existence of a prima facie case in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the Plaintiff would fall at the very first stile itself. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima facie case or even a very strong prima facie case does not permit, leap-frogging by the Plaintiff directly to an injunction without crossing the other hurdles in between....Even granting that the Plaintiff has an invincible prima facie case, he will not be entitled *ex debitaie justitiae*, to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the Plaintiff might have an unbeatable prima facie case.*

- 10.** These two celebrated judgement one of the Hon'ble Supreme Court of India and the other of the Hon'ble High Court of Karnataka beautifully encapsulate the principles underlying the grant of temporary injunction and there arises no necessity to look any further.

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- 11.** In order to be entitled for an order of temporary injunction, the Applicant has to first satisfy the court that he has a prima-facie case in his favour. Prima-facie case is the harbinger or the all clear sign to go ahead in investigating other aspects and on failure to establish it, further questions of balance of convenience and irreparable loss would fade into insignificance. Prima facie case, however, should not be confused with a case that is required to be proved to the hilt. The Court while examining if the Applicant has a prima facie case or not while deciding question of his entitlement for an order of temporary injunction, should not examine the merits of the case closely because at that stage, it is not expected to decide the suit finally. Once prima-facie case is established, the other aspects would have to be examined first being balance of convenience which in other words mean that the Court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the Applicant by refusing the injunction will be greater than that which is likely to be caused to the Opposite Party by granting it. Next, the applicant must further satisfy the Court by

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showing that he will suffer irreparable injury if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. The expression irreparable injury however does not mean that there should be no possibility of repairing the injury. It only means that the injury must be a material one, i.e., which cannot be adequately compensated by damages. Apart from these principles, the grant of temporary injunction being purely discretionary, other aspects would also factor in while considering entitlement for temporary injunction. The relief of temporary injunction may be refused on the ground of delay, laches or acquiescence or where the Applicant has not come with the clean hands or has suppressed material facts, or where monetary compensation can be an adequate relief. Establishing prima-facie case though is harbinger in examining other aspects, even where prima-facie case is established, it would not automatically entitle the Applicant to an order of temporary injunction unless he establishes the other aspects aforesaid. With these principles in mind, it

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would now be appropriate to delve into the essential facts of the case only to the extent necessary for disposal of this application.

- 12.** The case of the Plaintiffs is that the suit schedule property was granted to the deceased father-in-law of Plaintiff No.1 and grandfather of Plaintiffs No.2 and 3 one Babanna, who died intestate. Plaintiffs No.1 to 3 claim to have succeeded to the suit schedule property. It is alleged that one Thammegowda related to the Defendants, fraudulently obtained a registered sale deed dated 26.01.1975 from Babanna, and the Defendants are now falsely claiming ownership of the suit schedule property. Plaintiffs No.1 to 3 had executed an agreement for sale in favour of Plaintiff No.4, and in the suit filed in O.S. No.19/2023, a compromise was entered into between the parties. Consequently, Plaintiff No.4 is currently in possession and enjoyment of the suit schedule property as its absolute owner. Despite this, the Defendants are interfering with the Plaintiffs' rights, necessitating the filing of the present suit.

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- 13.** On the other hand, the Defendants contend that Thammegowda had lawfully purchased the suit schedule property under a registered sale deed dated 26.01.1975, and upon his death, the Defendants have become the absolute owners of the property. In these circumstances, the Defendants argue that the Plaintiffs' suit is not maintainable.
- 14.** In light of the rival contentions, it becomes necessary to examine the documents produced by both parties. The Plaintiffs have produced copies of the grant certificate, *pahani takte*, RTCs, G-tree, M.R. extract, *patta* book, suit documents of O.S. No.19/2023, GPA, and the order of the Assistant Commissioner. At this stage, the Defendants have not produced any documentary evidence.
- 15.** The pleadings on both sides clearly indicate the existence of the sale deed dated 26.01.1975, allegedly executed by Babanna in favour of Thammegowda. The Plaintiffs themselves have admitted to the existence of this sale deed in their plaint. Although they have alleged fraud in its execution, the only relief sought in the suit is that of bare injunction.

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- 16.** In light of the clear admission in the plaint regarding the existence of a registered sale deed relating to the suit schedule property, serious doubt arises as to the maintainability of the present suit, which seeks only a bare injunction without a corresponding prayer for declaration of title. Given these circumstances, it cannot be said that the Plaintiffs have established a prima facie case warranting the grant of a temporary injunction.
- 17.** The Applicants/ Plaintiffs having failed to prove prima-facie case which is the harbinger in examining other aspects, there is no necessity to examine the questions of balance of convenience or irreparable injury in view of dictum laid down in **GOWRISHANKARA SWAMIGALU V. SRI SIDDHAGANGA MUTT (supra)**. With these observations, the **Point No.1 to 3** which have arisen for my consideration are also answered in the **Negative**.
- 18. Point No.4:**For the foregoing reasons, I proceed to pass the following -

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ORDER

*I.A No.I filed by the Applicants/ Plaintiffs
under Order XXXIX Rules 1 & 2 r/w. Section
151 of C.P.C is hereby dismissed.*

Costs made easy.

(Dictated to Stenographer, after transcription, print out corrected and then pronounced by me in the Open Court on this the 4th of AUGUST, 2025)

sd/-

**(Rahul Shettigar)
Civil Judge & Addl. J.M.F.C,
Tarikere.**

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